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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9719]

RIN 1545-BM62

Notional Principal Contracts; Swaps With Nonperiodic Payments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations; correcting amendments.

SUMMARY: This document contains amendments to temporary regulations relating to guidance for the treatment of nonperiodic payments made or received pursuant to certain notional principal contracts. These amendments change the applicability date of the embedded loan rule for the treatment of nonperiodic payments from November 4, 2015, to the later of January 1, 2017, or six months after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. The amendments to the temporary regulations provide guidance to taxpayers who are parties making and receiving nonperiodic payments under notional principal contracts.

DATES: Effective Date: These amendments are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability Date: For the date of applicability, see §1.446-3T(j)(2), as corrected.

FOR FURTHER INFORMATION CONTACT: Alexa Dubert at (202) 317-6945 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these amendments are under section 446(b) of the Internal Revenue Code (Code). The temporary regulations (TD 9719) were published in the **Federal Register** on Friday, May 8, 2015 (80 FR 26437).

Need for amendments

Section 1.446-3T(g)(4)(i) of the temporary regulations provides that, subject to certain exceptions set forth in §1.446-3T(g)(4)(ii), a notional principal contract with one or more nonperiodic payments is treated as two separate transactions consisting of an on-market, level payment swap and one or more loans (the embedded loan rule). Section 1.446-3T(g)(4)(i) eliminated the exception to the embedded loan rule for non-significant, nonperiodic payments set forth in the final regulations (TD 8491) published in the **Federal Register** on October 14, 1993 (58 FR 53125) (the 1993 Regulations). See § 1.446-3. Section 1.446-3T(g)(4)(i) applies to notional principal contracts entered into on or after November 4, 2015. After publication of the temporary regulations, the Treasury Department and the IRS received comments requesting the delay of the applicability date of the embedded loan rule set forth in the temporary

regulations. In response to those comments, this document amends the applicability date to make § 1.446-3T(g)(4)(i) and § 1.446-3T (g)(6) Example 2 apply to notional principal contracts entered into on or after the later of January 1, 2017, or 180 days after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. Prior to the date of applicability of § 1.446-3T(g)(4)(i), as corrected, taxpayers may continue to apply the 1993 Regulations that (except for purposes of section 956) limit the application of the embedded loan rule to nonperiodic payments that are significant.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805* * *

Par. 2. Section 1.446-3T is amended by revising paragraph (j)(2) to read as follows:

§1.446-3T Notional principal contracts (temporary).

* * * * *

(j) * * *

(2) Application of § 1.446-3T(g)(4). Paragraph (g)(4)(i) of this section and paragraph (g)(6) Example 2 of this section apply to notional principal contracts entered into on or after the later of January 1, 2017, or 180 days after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. Paragraph (g)(4)(ii) of this section applies to notional principal contracts entered into on or after May 8, 2015. However, before the later of January 1, 2017, or 180 days after the date of publication of the Treasury decision adopting paragraph (g)(4)(i) of this section as final regulations in the **Federal Register**, taxpayers may rely on the provision in § 1.446-3(g)(4), as contained in 26 CFR part 1, revised April 1, 2015, which (except for purposes of section 956) limits the application of the embedded loan rule to nonperiodic payments that are significant, even if the requirements for the exceptions in paragraph (g)(4)(ii) of this section are not met. Taxpayers may apply paragraph (g)(4)(i) of this section, paragraph (g)(4)(ii) of this section, or both to notional principal contracts entered into before the dates set forth in this paragraph (j)(2).

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